



October 2, 2002

Ms. Meredith Ladd
Brown & Hofmeister, L.L.P.
1717 Main Street, Suite 4300
Dallas, Texas 75201

OR2002-5563

Dear Ms. Ladd:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170119.

The Town of Flower Mound (the "town"), which you represent, received a request for six categories of information related to municipal court judges and regulations, proceedings in the municipal court, and city attorneys and prosecutors practicing in the municipal court. You advise that there are no documents responsive to categories 1, 3, or 4 of the request. The Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). With respect to categories 5 and 6, the town sought clarification on July 23 on the basis that these portions of the request are too vague and broad. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request). The requestor has not responded to your request for clarification. When the requestor has not responded to a request for a clarification, a governmental body need not respond to the portions of the request for which it is seeking clarification. See Open Records Decision No. 663 (1999) (providing for tolling of ten business day time limit to request attorney general decision while governmental body awaits clarification). Despite the fact that you have sought clarification, however, you have submitted information that you now indicate is a representative sample of information that is responsive to the request as a whole. Therefore, we have considered

your claims that the submitted representative sample of information is not subject to the Act pursuant to section 552.003 or, in the alternative, is excepted from disclosure under sections 552.103 and 552.108 of the Government Code, and we have reviewed the information.¹

You advise that the responsive information consists of records maintained by the judiciary. We note that the submitted information reflects that it is information of the municipal court. Therefore, we must consider whether chapter 552 of the Government Code is applicable in this instance. Chapter 552 applies to information maintained by a governmental body. The definition of governmental body "does not include the judiciary." See Gov't Code § 552.003(1)(B). Thus, chapter 552 is not applicable to judicial records. See also *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ); Attorney General Opinion DM-166 (1992); Open Records Decision No. 618 at 4 (1993). Therefore, because the information responsive to this request consists of records held by the municipal court, the town is not required to comply with this request under chapter 552 of the Government Code. See Gov't Code § 552.0035 (access to information maintained by or for judiciary is governed by rules adopted by Supreme Court); Tex. R. Jud. Admin. 12 (public access to judicial records); Attorney General Opinion DM-166 at 1 (chapter 552 neither authorizes information held by judiciary to be withheld nor requires it to be disclosed). As chapter 552 is not applicable in this instance, we need not address your arguments under sections 552.103 or 552.108.

We note, however, that certain judicial records may be open to the public under sources of law other than chapter 552. See *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992) (documents filed with court are generally considered to be public); Attorney General Opinion DM-166 at 3 (public has general right to inspect and copy judicial records); Open Records Decision No. 618 at 4 (Texas courts have recognized common-law right of public to inspect and copy records of judiciary). Additionally, the records may be subject to disclosure under statutory law governing municipal courts. See Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Local Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order).

¹ We assume that the "sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).


If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Kristen Bates". The signature is written in black ink and is positioned above the printed name and title.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 170119

Enc. Submitted documents

c: Mr. Kenneth Magnuson
1712 Homestead Street
Flower Mound, Texas 75028
(w/o enclosures)